

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

TIMOTHY KENNEDY,)	
)	
Petitioner,)	
vs.)	Case No. 1:12-cv-1802-WTL-DKL
)	
KEITH BUTTS,)	
)	
Respondent.)	

Entry Discussion Petition for Writ of Habeas Corpus

Timothy Kennedy, an inmate currently confined at the New Castle Correctional Facility, petitions this Court to issue a Writ of Habeas Corpus due to errors allegedly occurring with regard to a prison disciplinary conviction as a result of a disciplinary hearing held on July 2, 2012 in case number NCN 12-06-0039. Kennedy was found guilty of Class B offense 213, threatening. The following sanctions were imposed: a thirty (30) day loss of commissary and telephone privileges; a twenty-five day deprivation of earned credit time; and demotion from credit class 2 to credit class 3. The respondent moves to dismiss Kennedy's petition arguing that he failed to exhaust his available administrative remedies.

Principles of exhaustion of available state remedies and procedural default apply to prison disciplinary proceedings as well as convictions. *Markham v. Clark*, 978 F.2d 993 (7th Cir. 1992). A prisoner must take all available appeals, including administrative appeals, and must raise in those appeals any issue on which the prisoner seeks federal review. *E.g., Eads v. Hanks*, 280 F.3d 728, 729 (7th Cir. 2002).

There is an appeal process in place within the DOC for disciplinary proceedings and the time for an appeal under the Disciplinary Code for Adult Offenders ("ADP") has passed.

Pursuant to the ADP, the second level of appeal “to the Appeal Review Officer must be submitted within fifteen (15) days from the date of receipt of the Facility Head or designee’s appeal response” There is no evidence that Kennedy appealed to the Facility Head or the Final Reviewing Authority. The office of the Final Reviewing Authority has no record of receiving such an appeal from the Kennedy. While Kennedy presents an affidavit from another offender who asserts that he drafted an appeal and addressed the envelope for him, Kennedy presents no evidence that his appeal was actually submitted. Accordingly, there is no evidence that Kennedy appealed the disciplinary action against him and exhausted his administrative remedies as required. Because Kennedy did not take all available appeals at the administrative level this habeas corpus action must be **dismissed**. Judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

Date: 07/15/2013

Distribution:

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Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

All electronically registered counsel